

REMARKS

Claims 1-53, 55-64, 67-73, 75, 76 and 78-104 are pending prior to this amendment. Claim 52 has been amended and claims 54, 56-59, 65-67, 74, 77, 91-92 and 102 have been cancelled in this amendment.

Claim Rejections Under 35 U.S.C. §101

Claims 52-53, 55-64, 67-72, 89, 91-93 and 102 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. This rejection is moot with respect to the cancelled claims 56-59, 67, 91, 92 and 102. The right to capture the subject matter of the cancelled claims in a continuation application is retained, however. The rejection of currently amended claim 52 and claims 53, 55, 60-64, 68-72, 89 and 93 is traversed.

As amended, claim 52 now recites “detecting the wavelength components.” There is nothing that requires analysis or calculations in this claim element. In the embodiments of this application, the element is implemented, for example, by directing the wavelength components along optical paths to a spectrometer, as illustrated in Figs. 3 and 4. We therefore disagree with the examiner’s premise implied by the statement on page 3, item 4, of the office action that the “detecting the wavelength components” has a final result which is a value that is not a tangible result. There appears to be no question that the rejected claims are within an enumerated statutory category under 35 U.S.C. 101. According to MPEP 2106 IV. C on pages 2100-10 and 2100-11, the examiner must then determine whether the invention of the claims falls within 35 U.S.C. 101 judicial exceptions of laws of nature, natural phenomenon and abstract ideas. It is only after the examiner has established that the invention of the claims falls within 35 U.S.C. 101 judicial exceptions will there be the issue of whether the invention of the claims is a practical application of a law of nature, natural phenomenon or abstract idea.

We assert that the rejected claims do not fall within 35 U.S.C. 101 judicial exceptions of laws of nature, natural phenomenon and abstract ideas. The examiner has failed to explain why the rejected claims, such as amended claim 52 and claim 72, do fall within 35 U.S.C. 101 judicial exceptions of laws of nature, natural phenomenon and abstract ideas. Thus, the examiner has failed to present a *prima facie* case that the invention of the rejected claims falls within any one of the 35 U.S.C. 101 judicial exceptions.

Furthermore, even assuming *arguendo* that the invention of the rejected claims does fall within one of the 35 U.S.C. 101 judicial exceptions, we believe that “detecting the wavelength components” does produce a tangible result. There is nothing abstract (which is the opposite of “tangible” as explained in MPEP 2106 IV. C2b on pages 2100-12) about “detecting the wavelength components.” The feature produces readings on intensities of the wavelength components, and certainly produces tangible results. In fact, it is hard to imagine a more tangible result than this. Displaying on a monitor or storing on a computer readable medium are not the only results that are tangible. Thus, the examiner has failed to explain why “detecting the wavelength components” does not produce tangible results.

From the above, it is believed that claim 72 is directed to statutory subject matter under 35 U.S.C. 101.

Claim 52 has been amended to employ the “detecting the wavelength components” language of claim 72. For reasons similar to claim 72 above, claim 52 is also directed to statutory subject matter under 35 U.S.C. 101.

We assert that the rejected claims 53, 55, 60-64, 68-71, 89 and 93 do not fall within 35 U.S.C. 101 judicial exceptions of laws of nature, natural phenomenon and abstract ideas. The examiner has failed to explain why these rejected claims fall within 35 U.S.C. 101 judicial exceptions of laws of nature, natural phenomenon and abstract ideas. Thus, the examiner has failed to present a *prima facie* case that the invention of these rejected claims falls within any one of the 35 U.S.C. 101 judicial exceptions. The examiner has also failed to explain why the various features of these claims do not produce tangible results. Thus, the examiner has failed to present a *prima facie* case that the invention of these rejected claims fails to produce tangible results.

It is believed that the rejected claims 53, 55, 60-64, 68-71, 89 and 93 are also directed to statutory subject matter under 35 U.S.C. 101.

Allowable Subject Matter

The allowance of claims 1-51, 73, 75, 76, 78-88, 90, 94-101, 103, and 104 is acknowledged and appreciated.

Claim Objections

Claims 52, 53, 55-64, 67-72, 89, 91-93 and 102 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. §101. Claim 52 has been amended. Amended 52 and claims 53, 55, 60-64, 68-72, 89 and 93 are believed to be directed to statutory subject matter under 35 U.S.C. 101.

Conclusion

Accordingly, it is believed that this application is now in condition for allowance and an early indication of its allowance is solicited. Claims 1-53, 55, 60-64, 68-73, 75, 76 and 78-90, 93-101, 103-104 are pending. However, if the Examiner has any further matters that need to be resolved, a telephone call to the undersigned at 415-318-1162 would be appreciated.

FILED VIA EFS

Respectfully submitted,



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6/8/07
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